266 NLRB No. 6

D--9502 Philadelphia, PA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ABLE BUILDING MAINTENANCE & SERVICE COMPANY

and

Case 4--CA--13006

LOCAL 1041, LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA, AFL--CIO

DECISION AND ORDER

Upon a charge filed on June 8, 1982, by Local 1041,
Laborers' International Union of North America, AFL--CIO, herein
called the Union, and duly served on Able Building Maintenance &
Service Company, herein called Respondent, the General Counsel of
the National Labor Relations Board, by the Regional Director for
Region 4, issued a complaint on July 30, 1982, against
Respondent, alleging that Respondent had engaged in and was
engaging in unfair labor practices affecting commerce within the
meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of
the National Labor Relations Act, as amended. Copies of the
charge and complaint and notice of hearing before an
administrative law judge were duly served on the parties to this
proceeding.

Respondent has failed to file an answer to the complaint, and to the allegations contained therein.

On September 8, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment.

Subsequently, on September 10, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show

Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides, inter alia:
''All allegations in the complaint, if no answer is filed . . .
shall be deemed to be admitted to be true and shall be so found by the Board.'' As set forth above, Respondent has not filed an answer to the complaint and it failed to respond to the Notice To Show Cause why summary judgment should not be granted due to this failure to file an answer. The time within which to file having passed, we find all allegations in the complaint to be true.
There being no issues in dispute, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

At all times material herein, Respondent, an Ohio corporation with its principal office at 1819 Kammer Avenue, Dayton, Ohio, has been engaged in providing janitorial services, with a facility located at the Defense Industrial Supply Center, Naval Aviation Supply Office, 700 Robbins Avenue, Philadelphia, Pennsylvania. Based on a projection of its operations since on or about June 1, 1982, at which time Respondent commenced its operations at the Naval Aviation Supply Office, Respondent will provide services valued in excess of \$50,000 at said Naval Aviation Supply Office. The complaint also specifically alleges that Respondent is, and has been at all times material herein, an employer within the meaning of the Act.

We find, on the basis of the foregoing and as alleged in the complaint that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

Respondent as noted above, has filed no answer to the allegations of the complaint. Further, the Board, in determining whether an employer's operations meet the jurisdictional standard may consider, inter alia, income from the past calendar year, projections of income for the future period, in situations involving newly established businesses, or combinations of both, where established businesses and new businesses are involved. Jere Fowler, Richard Gallina, Charles Gallina and Theodore Wilson d/b/a Pet Inn's Grooming Shoppe and Germantown Pet Inn's Grooming Shoppe, 220 NLRB 828 (1975).

II. The Labor Organization Involved

Local 1041, Laborers' International Union of North America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

1. Since 1978, and at all times material herein, the Union has been recognized as the exclusive collective-bargaining representative of the employees as set forth in the following unit:

All janitorial and maintenance employees employed by the employer at the Naval Aviation Supply Office, 700 Robbins Avenue, Philadelphia, Pa. but excluding all other employees, guards and supervisors as defined in the Act.

Such recognition has been embodied in successive collective-bargaining agreements between Clarkie's, Inc. (predecessor of Respondent), and the Union, the most recent of which was effective by its terms from April 16, 1982, to April 15, 1984. On or about February 1982, Respondent was awarded a janitorial maintenance contract by the Department of the Navy for certain janitorial services previously performed by Clarkie's, Inc. Since June 1, 1982, Respondent has been engaged in the same business operations, at the same location, providing the same services, as Clarkie's and has as a majority of its employees individuals who were previously employees of Clarkie's, Inc.

On the basis of the foregoing we find therefore that Respondent has continued to be the employing entity, and is a successor-employer to Clarkie's, Inc.

On or about May 11, 1982, the Union, by letter, requested Respondent to bargain collectively with it as the exclusive bargaining representative of the employees in the unit described above, with respect to their rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about May 11, 1982, Respondent has failed and refused to bargain with the Union as the exclusive representative of the unit employees. Accordingly, we find that, by such refusal, since June 1, 1982, Respondent has engaged in, and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

2. On or about June 1, 1982, Respondent, through Eric Sanchez, its project manager and a supervisor within the meaning of Section 2(11) of the Act, solicited employees to withdraw from membership in or support of the Union, and conditioned employment upon said withdrawal from membership in or support of the Union.

On the basis of the foregoing, we find that Respondent has restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce
The activities of Respondent set forth in section III,
above, occurring in connection with its operations described in
section I, above, have a close, intimate, and substantial
relationship to trade, traffic, and commerce among the several

States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

Having also found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), we shall order that it cease and desist from soliciting employees to withdraw from membership in, or support of the Union, and refrain from conditioning employment with Respondent upon said withdrawal from membership in or support of the Union.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

- Able Building Maintenance & Service Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. Local 1041, Laborers' International Union of North
 America, AFL--CIO, is a labor organization within the meaning of
 Section 2(5) of the Act.
- 3. All janitorial and maintenance employees employed by the employer at the Naval Aviation Supply Office, 700 Robbins Avenue,

Philadelphia, Pa. but excluding all other employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

- 4. Since 1978, and at all times material herein, the above-named labor organization has been recognized as the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
- 5. By refusing on or about June 1, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
- 6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
- 7. By soliciting employees, through its agent, to withdraw membership in, or support of the Union, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of rights guaranteed them in Section 7 of the Act, and has thus engaged in

and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations

Act, as amended, the National Labor Relations Board hereby orders
that the Respondent, Able Building Maintenance & Service Company,

Dayton, Ohio, its officers, agents, successors, and assigns,

shall:

- 1. Cease and desist from:
- (a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 1041, Laborers' International Union of North America, AFL--CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All janitorial and maintenance employees employed by the employer at the Naval Aviation Supply Office, 700 Robbins Avenue, Philadelphia, Pa. but excluding all other employees, guards and supervisors as defined in the Act

- (b) Soliciting employees to withdraw from membership in or support of the Union, or conditioning employment upon said withdrawal from membership in or support of the Union.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

- 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:
- (a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.
- (b) Post at its principal place of business in Dayton,
 Ohio, and at all its other places of business, including its
 facility at the Naval Aviation Supply Office, Philadelphia,
 Pennsylvania, copies of the attached notice marked ''Appendix.''2
 Copies of said notice, on forms provided by the Regional Director
 for Region 4, after being duly signed by Respondent's
 representative, shall be posted by Respondent immediately upon
 receipt thereof, and be maintained by it for 60 consecutive days
 thereafter, in conspicuous places, including all places where
 notices to employees are customarily posted. Reasonable steps
 shall be taken by Respondent to insure that said notices are not
 altered, defaced, or covered by any other material.

In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(c) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. January 17, 1983

Howard Jenkins, Jr., Member _____ Member Don A. Zimmerman, Robert P. Hunter, Member NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 1041, Laborers' International Union of North America, AFL--CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT solicit employees to withdraw from membership in or support of the Union, or condition employment upon said withdrawal from membership in or support of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the abovenamed Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is: All janitorial and maintenance employees employed by the employer at the Naval Aviation Supply Office, 700 Robbins Avenue, Philadelphia, Pa. but excluding all other employees, guards and supervisors as defined in the Act

		BUILDING MAINTENANCE VICE COMPANY
and the state of t		(Employer)
Dated By	(Representative)	(Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, Telephone 215--597--7643.